CBIA's EPC
ENVIRONMENTAL POLICIES COUNCIL
Strategies for a Sustainable Future

Commerce Committee

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H.B. 6526 (Raised): An Act Concerning Brownfield Remediation and Development as an Economic Driver

Position: CBIA supports this bill but with a critical deletion to subsection 17(b) removing restrictions on the number and types of brownfields that can take advantage of the benefits offered under the rest of the section 17.

Good morning. My name is Eric Brown and I serve as associate counsel with the Connecticut Business & Industry Association (CBIA). CBIA represents roughly ten thousand small and large businesses throughout Connecticut employing hundreds of thousands of Connecticut citizens who rely on a safe, affordable and reliable supply of water.

Section 17 of this bill, if amended to delete subsection 17(b), would fundamentally change the marketability of Connecticut brownfield sites and attract private-sector investment for the clean-up and economic revitalization of hundreds if not thousands of these sites throughout Connecticut.

This section begins to wean Connecticut brownfields sites away from the draconian, environmental and economically stifling liability scheme that assigns responsibility for on- and off-site contamination to the owner of the property -- even if the owner had no connection whatsoever to the person, entity or activity that caused historic contamination at the site.

Specifically, and most fundamentally, this section would allow brownfield developers to take ownership of such sites and assume liability only to the extent of cleaning up the property itself -- while being released from the obligation to "chase" any possible off-site contamination. The developer would retain the obligation currently in place under state

law, to report to the state, any significant environmental hazard as defined by statute, which are found to be going off-site.

Further, those taking advantage of this program by taking ownership brownfields that meet the definition of an "establishment" under the Connecticut Transfer Act, would not be required to enter the Transfer Act Program.
Finally, upon approval of the remediation, DEP would be required to issue a "Notice of Completion of Remedy and No Further Action" letter, providing a critical end point to the process and releasing the developer from further state liability with respect to approved cleanup conducted under the program.

Unfortunately, the vast majority of the beneficial impact of this section could be scuttled because of the subjective uncertainty and restrictions contained in subsection 17(b). The restrictions in that subsection would limit the number of sites to 20 and limit those sites to those which the state deems "eligible." These restrictions literally short-circuit the spirit of the rest of the section by reintroducing the type of bureaucracy and uncertainty that has kept brownfield investors away from Connecticut for decades.

One clause would institute brownfield eligibility requirements whereby the Department of Economic and Community Development would determine, through a subjective process, which sites could take advantage of the program. Developers have indicated that this subjectivity and uncertainty would continue to put Connecticut at a disadvantage as a place to conduct brownfield redevelopment relative to other states that have no such "review and approval" process. Many of these eligibility requirements are also tied to receiving financial assistance from the state for brownfield development projects. We have no objection to having significant state investments in brownfields guided by eligibility criteria – they already are, but placing such restrictions on projects involving no state funding reduces the process to a series of uncertain, subjective and political procedures resulting in the state picking winners and losers. This clause contradicts the spirit of the rest of the section that reflects the philosophy that cleaning up any brownfield (particularly where no state funding is involved) – no matter what size or where it's located, positively advances the environment and the economy and should be enthusiastically encouraged, not restrained.

As a further constraint, a second clause in subjection (b) would limit the program to 20 properties per year. Again, if no state funding is involved, why limit success? Is the state is concerned that too many cleanups come into the program? – what a problem to have?

Perhaps the state should consider charging the developers a reasonable fee or create a "fee-for-service" program whereby the limited staffing needs anticipated for monitoring and moving these project expeditiously over bureaucratic hurdles could be billed to the developer. Such fees, if reasonably applied, would not hinder environmental cleanups. Inserting uncertainty and a subjective process that picks winners and losers, certainly would.

Therefore, the language of section 17 of Raised Bill 6526, minus the eligibility criteria and the limit on the number of sites that can enter the program contained in subsection (b) of that section, would constitute a huge step forward and send a strong signal that Connecticut is very serious about cleaning up pollution while growing the economy and jobs.

One additional recommended change to Section 5: CBIA is working with other stakeholder to revise this section in order to future proposed revisions to the Remediation Standard Regulation will reflect a serious consideration of the fiscal impacts of such revisions on brownfield redevelopment and the remediation of other contaminated properties in the state, and be reflective of the risk methodologies, assumptions and applications adopted by the federal government.

We urge the committee's support of this bill with the modifications identified above.

Thank you very much for raising this bill, your continued support for stimulating brownfield redevelopment in Connecticut, and this opportunity to provide comment.